

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS, EMPLOYEE TRUST FUNDS BOARD
TEACHERS RETIREMENT BOARD, AND WISCONSIN RETIREMENT BOARD**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #01-096

A RULE Amending ss. ETF 20.03 (3), 20.04 (1), (2) and (3), and 20.05 (title), (1) and (2),
Wisconsin Administrative Code, relating to joint and survivor annuity reduced
25% upon death of annuitant or named survivor.

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Agency Person to be Contacted for Questions

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Statement Explaining Need for Rule

The Department of Employee Trust Funds is required by Wis. Stats. § 227.10 (1) to promulgate as a rule each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. The proposed rule revisions provide two significant advantages: (1) allows the participant to receive the full annuity payment for one additional month before the amount decreases by 25% upon the death of the named survivor; and (2) decreases the situations in which the Department must recover an overpayment from the participant by the 25% based upon cutoff dates of annuity changes and late notification of deaths.

Analysis Prepared by the Wisconsin Department of Employee Trust Funds

Authority for Rule: Wis. Stats. § 40.03 (1) (m), (2) (i), (7)(d) and (8)(d) and 40.24 (1)(g).

Statutes Interpreted: Wis. Stats. § 40.02 (5), 40.24 (1)(e) and (g); 40.25 (1)(a).

Some Wisconsin Retirement System (WRS) annuity options are defined by administrative rule, as authorized by Wis. Stats. § 40.24 (1) (g). S. ETF 20.04 (1) creates an option for a joint and survivor annuity with payments reduced by 25% upon the death of either the participant or the joint survivor named on the original annuity application. At present, this reduction affects the annuity payment for the month in which either the participant or the named survivor dies. Since the effect is currently retroactive to the first of the month, when the joint survivor dies an overpayment to the participant routinely occurs, requiring collection efforts or other adjustments. The proposed rulemaking will amend s. ETF 20.04 (1) to specify that a reduction in payment due to the death of the named survivor will not take effect until the end of the month in which the death occurs. No change is proposed with respect to the reduction resulting from the death of the participant; this avoids any conflict with the portion of Wis. Stats. § 40.02 (5) concerning the last payment of an annuity due to an annuitant.

The proposed rulemaking will include several non-substantive, technical amendments that will conform the rules to changes in terminology used by the Department, correct cross-references to renumbered statutes and conform the language of the rules to newly defined terms. The proposed rulemaking will amend terminology in s. ETF 20.04 (1) and (2) to conform the rules to the newly defined terms "joint and survivor annuity" and "named survivor" found in Wis. Stats. § 40.02 (39r) and (41r), created by 1997 Wis. Act 110.

One type of annuity available from the WRS is intended to provide enhanced WRS benefits until the annuitant becomes eligible for Social Security benefits at age 62. It is the intent of this option that the annuitant's total anticipated income from both the WRS and Social Security will be the

same each month, both before and after reaching age 62. This type of annuity was previously called a "Social Security Integrated" annuity. The Department has now adopted the term "Accelerated Payment Annuity" to describe this option, to preclude the misperception that this option involves the Department interacting with the Social Security Administration to coordinate and calculate this benefit. The proposed rulemaking will amend ss. ETF 20.03 (3), 20.04 (3) and 20.05 (1), to replace the description "social security integrated annuity" with the terminology "accelerated payment annuity" to describe the temporary annuity authorized by Wis. Stats. § 40.24 (1) (e).

The proposed rulemaking will add "alternate payee" to the list of persons in s. ETF 20.05 who may not choose the accelerated annuity option described in Wis. Stats. § 40.24 (1) (e), if the result would be that the amount of the lifetime annuity would be less than a specified threshold. This reflects the harmonizing of the accelerated payment option under Wis. Stats. § 40.24 (1) (e) with the threshold in Wis. Stats. § 40.25 (1) (a) for payment of a life annuity. The dollar amount of this threshold is indexed annually by the salary index defined in Wis. Stats. § 40.02 (52). The proposed rulemaking will also update the stated dollar amount of the threshold (\$25 in 1982) to the present indexed amount (\$129 in 2001).

In addition, the proposed rulemaking will revise the cross-references in ss. ETF 20.04 (3) and 20.05 (1) and (2) from "s. 40.24 (4)" to "s. 40.24 (1) (e)." This reflects the renumbering of Wis. Stats. § 40.24 (1) to (5) by 1989 Wisconsin Act 166.

Fiscal Estimate

The Department estimates that there will be no direct fiscal impact from this proposed rule upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education school district or sewerage district.

The rule itself has no anticipated state fiscal effect during the current biennium and no future side effect on state funds. The Department's actuary has indicated that the proposed rule would have such a negligible effect on the benefit liabilities of the annuity reserve for this annuity option that no change to the actuarial factor used to calculate this option would be necessary.

Final Regulatory Flexibility Analysis

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

(BEGINNING OF RULE TEXT)

SECTION 1. ETF 20.03 (3) is amended to read:

ETF 20.03 (3) The actuarial factors used in computing annuities for beneficiaries shall be the same as the factors used in computing retirement annuities. For purposes of computing a beneficiary ~~social security integrated~~ accelerated payment annuity the beneficiary's estimated

OASDHI benefit shall be the primary OASDHI benefit amount determined for the deceased participant pursuant to sub. (2).

SECTION 2. ETF 20.04 (1) is amended to read:

ETF 20.04 (1) A joint ~~and~~ survivor ~~survivorship~~ annuity with payments reduced 25% ~~upon the death of~~ effective either with the payment for the month in which the participant dies, or effective with the payment for the month after the month in which the ~~one beneficiary~~ named survivor who was designated by the participant in the original application for an annuity dies.

SECTION 3. ETF 20.04 (2) (a), (b), (c), (d), (e) and (g) are amended to read:

ETF 20.04 (2) (a) A joint and survivor ~~survivorship~~ annuity payable for the life of the annuitant, with a guarantee period of at least 180 monthly payments, and after the death of the annuitant continued at 100% for the life of the ~~one beneficiary~~ named survivor who was designated by the participant as the ~~joint~~ named survivor in the original application for the annuity.

ETF 20.04 (2) (b) The participant may name a secondary beneficiary or beneficiaries to receive the balance of payments due in the event of the death of both the participant and named ~~joint~~ survivor before 180 monthly payments have been made.

ETF 20.04 (2) (c) The participant, or in the event of the death of the participant, the named ~~joint~~ survivor, may at any time change the designation of the secondary beneficiary.

ETF 20.04 (2) (d) In the event of the death of the ~~joint~~ named survivor who is receiving continued benefits after the death of the participant, but prior to payment of 180 monthly benefits, the remainder of the 180 monthly payments shall continue to the secondary beneficiary, or in the absence of a secondary beneficiary or the death of the secondary beneficiary prior to the death of the ~~joint~~ named survivor, payment shall be made under the ~~joint~~ named survivor's standard sequence as set forth in s. 40.02 (8) (a) 2., Stats.

ETF 20.04 (2) (e) In the event of the death of the ~~joint~~ named survivor prior to the death of the participant, the remainder of the 180 monthly payments shall continue to the secondary beneficiary, or in the absence of a secondary beneficiary designation or the death of the secondary beneficiary prior to the death of the participant, payment shall be made under the participant's standard sequence as set forth in s. 40.02 (8) (a) 2., Stats.

ETF 20.04 (2) (g) In the event of the death of both the ~~joint~~ named survivor and secondary beneficiary prior to being entitled to receive benefits, the remaining monthly payments shall continue pursuant to the participant's standard sequence as set forth under s. 40.02 (8) (a) 2., Stats., if the participant's death occurs before 180 monthly payments have been made.

SECTION 3. ETF 20.04 (3) is amended to read:

ETF 20.04 (3) An annuity payable under sub. (1) or (2) plus a ~~social security integrated~~ accelerated payment annuity as determined under s. 40.24 ~~(4) (1) (e)~~, Stats.

SECTION 4. ETF 20.05 (title), (1) and (2) are amended to read:

ETF 20.05 (title) ~~Annuity options integrated with social security~~ Accelerated payment annuity options

ETF 20.05 (1) A participant, alternate payee or beneficiary shall not be eligible for the ~~social security integrated~~ accelerated payment annuity if the reduced annuity payable for life in the normal form under s. 40.24 ~~(4) (1) (e)~~ would be equal to or less than \$~~25~~ 129 per month for a benefit with an effective date in calendar year ~~1982~~ 2001 or, for a benefit with an effective date in a subsequent calendar year, the monthly amount applied under this section for the previous calendar year increased by the salary index, as defined in s. 40.02 (52), Stats., ignoring fractions of the dollar.

ETF 20.05 (2) Pursuant to s. 40.03 (2) (k), Stats., the department will assume that the primary OASDHI benefit, as defined in s. 40.02 (44), Stats., for a person eligible to receive a beneficiary annuity and selecting an option payable under s. 40.24 ~~(4) (1) (e)~~, Stats., will be based on the work record of the participant from whose account the benefit is being paid.

(END OF RULE TEXT)

Effective Date

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in Wis. Stat. § 227.22 (2).

Explanation of Modifications as Result of Testimony at Public Hearing

A public hearing was held on the proposed rule on Thursday, September 13, 2001, at 1:00 p.m. at the Department of Employee Trust Funds, 801 West Badger Road, Madison, in room 2B. No testimony was offered at the public hearing. The only modifications made to the text of the rule were in response to the recommendations of the Legislative Council Staff.

List of Persons Appearing or Registering For or Against the Rules

No persons appeared or registered either for or against the rule at the public hearing on September 13, 2001. The record was held open for written comments until September 14, 2001, but no comments were received.

Legislative Council Staff Clearinghouse Report on CR #01-096

Response to Legislative Council Staff Recommendations

The Legislative Council Staff's recommendation concerning adequacy of references to related statutes, rules and forms was adopted. These modifications affected the authority for rule section and the inclusion of s. ETF 20.03 (3).

Board Authorization for Promulgation

This final draft report on Clearinghouse Rule #01-096 has been duly approved for submission to the Legislature and for promulgation by the Employee Trust Funds Board at its meeting on September 21, 2001, and by both the Teachers Retirement and Wisconsin Retirement Boards at their respective meetings on September 20, 2001.

Respectfully submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS

Eric O. Stanchfield, Secretary
Wisconsin Department of Employee Trust Funds